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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1221

OSWALD AND HESS COMPANY, A CORPORATION,
Petitioner,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS AND BRIEF IN SUPPORT THEREOF.

ELI E. REICH,
BENJAMIN M. BECKER,
Counsel for Petitioner.

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Oswald and Hess Company, petitioner, respectfully prays for a Writ of Certiorari to the United States Emergency Court of Appeals to review the determination of that Court entered in the above case on March 29, 1945, dismissing the complaint of your Petitioner filed with that Court after denial of its protest agaist Maximum Price Regulation 169, issued pursuant to the Emergency Price Control Act of 1942 (Pub. L. No. 421, 77th Cong., 2d Sess.).

Summary Statement of Matters Involved

The United States Emergency Court of Appeals issued an order and rendered an opinion (R. 189, 184) dismissing the complaint both on the authority of its decision in *Armour &*

Company v. *Chester Bowles*, a companion case decided on the same day, and because it concluded that the premium allowed by the regulation to hotel supply houses was neither excessive nor discriminatory. The Court also decided that it had no jurisdiction to pass upon paragraph 1364.455 (b) of the regulation, which restricted a slaughterer from entering that type of business unless he was so engaged in a base period.

On August 20, 1942, your Petitioner filed a formal, timely protest to Maximum Price Regulation 169, C. F. R. Title 32, Chapter 11, Part 1364, issued June 19, 1942, which was docketed at No. 1169-26-P. This protest was filed under Section 203 of the Emergency Price Control Act of 1942.

After extended proceedings, the Administrator, on May 4, 1943, issued an Order denying the protest insofar as relief was not found in the provisions of Revised Maximum Price Regulation 169, which had been issued on December 10, 1942 (7 F. R. 10381).

On May 24, 1943, your Petitioner filed its complaint in the United States Emergency Court of Appeals. On November 3, 1943, the Emergency Court of Appeals granted an application by Petitioner for leave to introduce additional evidence to show the inadequacy of the relief afforded by the revised regulation in conjunction with the subsidy program established pursuant to the Directive of the Economic Stabilization Director issued October 26, 1943 (8 F. R. 14641). Accordingly, the Respondent, on November 23, 1943, reopened the protest proceedings to receive the additional evidence and thereafter the protest proceeding was focused on the issue of the validity of RMPR 169. On July 6, 1944, the Respondent issued an Order, with accompanying opinion, denying the protest upon reconsideration.

The complaint to the United States Emergency Court of Appeals followed, and the Court filed an opinion and made an order on March 29, 1945 dismissing the complaint.

Statements Disclosing Basis of Jurisdiction to Review

1. The jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942.

2. The decision of the United States Emergency Court of Appeals was entered on March 29, 1943 (R. 189).

Questions Presented

Questions presented are:

1. Does the Price Administrator have authority to issue a regulation which forces petitioner to sell one of its principal products at a loss?

2. Is a price regulation discriminatory which permits a hotel and restaurant supply house, which fabricates cuts of beef, to operate at a profit and compels an ordinary slaughterer, operating under the same regulation, to sell similar cuts of beef at a loss?

3. Is a regulation valid which prohibits petitioner, a slaughterer and processor, from selling its product to hotels and restaurants because it was not so engaged in a base period fixed by the Administrator?

Reasons Relied On for Allowance of Writ

The problems faced by the meat industry because of the beef regulation, MPR 169, have assumed national importance since its inception. The decision of the United States Emergency Court of Appeals, dismissing the complaint in the instant case, has a far reaching effect for the reason that the Court has in substance upheld the principle that a regulation can in effect direct a company to sell its merchandise at a loss and still be valid.

The United States Emergency Court of Appeals has also decided that a hotel and restaurant supply house is en-

titled to receive a premium for the fabricating it does and thereby earn a profit, while the ordinary slaughterer, like the Petitioner herein, doing the same general job of processing, must sell below its cost of production.

The Emergency Court of Appeals has also taken the position that it has no jurisdiction over paragraph 1364.455 (b) of Maximum Price Regulation 169, which limits other processors from entering the hotel and restaurant supply business unless they were so engaged in a base period.

All of the foregoing reasons establish that Maximum Price Regulation 169 is discriminatory and unfair, and should be set aside.

WHEREFORE, your Petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Emergency Court of Appeals, commanding that Court to certify and send to this Court for its review and determination, a full and complete transcript of the record and all proceedings in this case numbered and entitled on its docket, No. 49, Oswald and Hess Company, a corporation, v. Chester Bowles, Price Administrator, and that said judgment of the United States Emergency Court of Appeals may be reversed and that Petitioner may have such other and further relief in the premises as to your Honorable Court may seem meet and just.

And your Petitioner will ever pray.

ELI E. REICH,
BENJAMIN M. BECKER,
Counsel for Petitioner.